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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,487	03/12/2004	Jean Pierre Giraud	62357.012702	8369
32361	7590	06/12/2007		
GREENBERG TRAURIG, LLP MET LIFE BUILDING 200 PARK AVENUE NEW YORK, NY 10166			EXAMINER BUTLER, MICHAEL E	
			ART UNIT	PAPER NUMBER
			3653	
			MAIL DATE	DELIVERY MODE
			06/12/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/799,487	<b>Applicant(s)</b> GIRAUD, JEAN PIERRE	
	<b>Examiner</b> Michael Butler	<b>Art Unit</b> 3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 3,4,8,9,15,16,20 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,2,5,6,10-14,17-19 and 22-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Priority***

1. Applicant's claim of priority to application 10/177786 filed 6/30/2002 is acknowledged.

***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 19, 1, 21, 32b", 36", 32", 32', 325. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 7, 23', 22b, 21, 32b', 36", 329", 429, Z, 75, 100, 218. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in

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the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Election/Restriction***

4. Applicant's election of species III without traverse of the species requirement is acknowledged and made final.
5. Claims 3-4, 8-9, 15-16, 20-21 are withdrawn from further consideration.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
7. Claim(s) 11-12 and 23-24 is/are rejected under 35 U. S. C. 112 second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is insufficient antecedent basis in the claims for the following term(s): (Re: cl 11/12/23/24) the tamper evident seal.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:  
A person shall be entitled to a patent unless --
  - (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
  - (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States

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- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

9. Claims 1-2, 5-6, 12-14, 17-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Giraud et al. '685 (7073685) which discloses all the claimed elements including:

(Re: cl 1,13) A dispenser for dispensing solid objects comprising a reservoir for retaining solid objects that is in communication with dispensing zone having a reusable opening (c3 L 52-67 ) and an ejector positioned opposite a space for retaining a solid object (c5 L 50-59)

(Re: cl 2,14) wherein the dispensing zone is positioned under the reservoir (fig 2/3; c3 L 52-67 )

(Re: cl 5,17) wherein the ejector is comprised of a relatively soft material that deforms in the direction of the resealable opening in response to an ejecting force (c4 L 17-41)

(Re: cl 6,18) wherein the ejector is comprised of an elastomer (c4 L 17-41).

10. Claims 1-2, 5-6, 12-14, 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Giraud et al. '478 (WO 00/40478) as evidenced by citations to cites in its chronologically junior English equivalent, Giraud et al. '685.

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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12. Claim(s) 1-3, 6-7, and 9-10 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Giraud et al. '478 (WO 00/40478) in view of Ma et al. wherein the former discloses the elements previously discussed and the latter discloses any the elements not inherently taught by the former including:

(Re: cl 10,22) wherein the opening is provided with a tamper evident seal that is constructed of frangible material (c5 L 50-59) c3 L 36-51)

(Re: cl 11,23) wherein the tamper evident seal is comprised of a disc frangibly joined to the opening and a tab joined to the disc ( )

(Re: cl 12,24) wherein the tamper evident seal is a comprised of a disc frangibly joined to the opening and a cross joined to the disc ( )

It would have been obvious for Giraud et al. '478 to use a rigid disc shaped frangible seal because to detect malicious tampering of the dispenser openings as taught by Ma et al. and come up with the instant invention.

13. Claim(s) 1-3, 6-7, and 9-10 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Giraud et al. '478 (WO 00/40478) in view of Gibilisco et al. 4653668 wherein the former discloses the elements previously discussed and the latter discloses any the elements not inherently taught by the former including:

(Re: cl 7,19) wherein the ejector is comprised of LDPE (c5 L 43-49)

It would have been obvious for Giraud et al. '478 to use a polyethylene because polyethylene has a high durability, strength, and elastomericity in a biasable material as taught by Gibilisco et al. and come up with the instant invention.

### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Michael E. Butler whose telephone number is (571) 272-6937.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey, can be reached on (571) 272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, reading "Michael E. Butler". The signature is written in a cursive, flowing style.

Michael E. Butler

Examiner